

Message Text

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OIC-02 ACDA-12 AGRE-00 AID-05 CEA-01 CEQ-01 CG-00
CIAE-00 COME-00 DODE-00 DOTE-00 EB-08 EPA-01
SOE-02 DOE-15 FMC-01 TRSE-00 H-01 INR-10 INT-05
IO-13 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01 OES-07
OMB-01 PA-01 PM-05 SP-02 SS-15 ICA-11 /190 W
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P 250935Z APR 78

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C O N F I D E N T I A L SECTION 01 OF 03 GENEVA 06208

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS CONFERENCE - APRIL 20 HIGHLIGHTS

SUMMARY: HIGHLIGHT OF DAY WAS SPEECH BY AMB. RICHARDSON
ON THE NEED TO MODIFY THE ICNT PROVISIONS REGARDING MARINE
POLLUTION AND SCIENTIFIC RESEARCH. WITH REGARD TO DISPUTE
SETTLEMENT, MEXICO PROPOSED THAT THERE SHOULD BE NO PRO-
VISIONS APPLICABLE TO FISHERIES IN THE EEZ. END SUMMARY.

1. FIRST COMMITTEE: THE NJENGA GROUP (NG-1) MET IN
MORNING TO DISCUSS PROVISIONS OF ANNEX II RELATED TO
ARTICLE 151 SYSTEM OF EXPLORATION AND EXPLOITATION. A
NUMBER OF DELEGATIONS MADE DETAILED PROPOSALS FOR A SERIES
OF SMALL BUT IMPORTANT CHANGES IN PARAS 4, 5 AND 6 AND
INCLUSION OF DEFINITIONS OF "PROSPECTING," "EXPLORATION"
AND "EXPLOITATION" IN PARAS 2 AND 3. NEGOTIATING GROUP 3
ON FINANCIAL ARRANGEMENTS MET IN AFTERNOON TO BEGIN DIS-
CUSSION OF FINANCING THE ENTERPRISE. RATTRAY OF JAMAICA
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LED OFF WITH EMPHASIS OF NEED "TO HAVE ASSURED ACCESS TO
FINANCING" FOR ENTERPRISE AND US REPRESENTATIVE MADE STATE-
MENT OUTLINING US POSITION REFERRING TO AMB. RICHARDSON'S
STATEMENT OF JUNE 13 AND POINTING OUT SEVERAL PROBLEMS IN
WORDING OF TEXT OF ANNEX III. NJENGA SMALL DRAFTING GROUP
ALSO MET TO DISCUSS SEVERAL NJENGA COMPROMISE PROPOSALS.
CONSENSUS APPEARS TO BE EMERGING ON ARTICLE 151 WITH

SIGNIFICANT IMPROVEMENTS ON IMPORTANT POINTS BUT PROGRESS ON NJENGA ANNEX II PROPOSALS APPEARS LIKELY TO BE RETARDED BY BRAZIL'S ATTEMPT TO INCLUDE PROVISION FOR TRANSFER OF TECHNOLOGY TO DEVELOPING COUNTRIES AS WELL AS TO ENTERPRISE.

2. NEGOTIATING GROUP 4 RESUMED DISCUSSION OF THE RIGHTS OF COASTAL AND THE LAND-LOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES TO THE LIVING RESOURCES OF THE EEZ. THE INTRANSIGENCE OF BOTH SIDES PERSISTED. THE LL/GDS GROUP REITERATED ITS DEMAND THAT ACCESS NOT BE CONFINED TO THE SURPLUS, WHILE THE COASTAL STATE GROUP HELD TO ITS POSITION THAT ACCESS COULD ONLY BE GRANTED ON THE BASIS OF A SURPLUS FORMULA.

3. DELIMITATION: NEGOTIATING GROUP 7 HELD ITS FIRST SUBSTANTIVE MEETING ON APRIL 20. FOLLOWING THE WORK PLAN OUTLINED BY CHAIRMAN MANNER (FINLAND) AT THE ORGANIZATIONAL MEETING OF APRIL 19, THE GROUP FIRST HELD A DEBATE NOMINALLY ADDRESSED TO THE RELATION BETWEEN MARINE BOUNDARY DELIMITATION AND DISPUTE SETTLEMENT. IN FACT IT WAS A GENERAL DEBATE IN WHICH MEMBERS OF THE TWO OPPOSING GROUPS SIMPLY REITERATED PREVIOUSLY STATED POSITIONS ON ARTICLES 74, 83 AND 297(1)(A).

4. THE DELEGATE OF GREECE POINTED UP THE DIFFERENCES WHICH CONTINUE TO DIVIDE THE GROUPS. ON THE QUESTION OF CONFIDENTIAL

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APPLICABLE PRINCIPLES OF DELIMITATION, ONE SIDE FAVORS EQUITY, THE OTHER BELIEVES EQUIDISTANCE SHOULD RULE ABSENT SPECIAL CIRCUMSTANCES. ONE SIDE FEELS THERE SHOULD BE NO PROVISIONAL BOUNDARY PENDING NEGOTIATED SETTLEMENT, THE OTHER SUPPORTS THE EQUIDISTANCE OR MEDIAN LINE AS A PROVISIONAL BOUNDARY. ONE SIDE OPPOSES ANY COMPULSORY DISPUTE SETTLEMENT, THE OTHER FAVORS IT. FOR DIFFERING REASONS, ALMOST ALL DELEGATIONS FIND THE PRESENT TEXTS OF 74 AND 83 UNSATISFACTORY.

5. INTERVENTIONS ON THE EQUITY-NO PROVISIONAL LINE SIDE WERE MADE BY ARGENTINA, THE FEDERAL REPUBLIC OF GERMANY, FRANCE, IRELAND, LIBYA AND TURKEY. SPEAKERS IN SUPPORT OF EQUIDISTANCE INCLUDED ALGERIA, CHILE, CYPRUS, GREECE, MALTA, NORWAY, SPAIN, SWEDEN, TRINIDAD AND TOBAGO, AND UNITED ARAB EMIRATES.

6. ALSO ON THIS SIDE BUT MORE CONCILIATORY IN TONE WERE STATEMENTS BY THE NETHERLANDS AND DENMARK. THE SOVIET UNION ALSO MADE A MODERATE BUT CONFUSING SPEECH IN WHICH IT SEEMED TO SUGGEST THAT, INSTEAD OF MENTIONING ONLY EQUIDISTANCE, A VARIETY OF PARTICULAR METHODS OF DELIMITATION

SHOULD BE NOTED IN THE TWO ARTICLES. INDIA (JAGOTA) MADE AN EXTENDED INTERVENTION, SUPPORTING EQUIDISTANCE AS THE DEMONSTRABLY EQUITABLE RULE ON THE BASIS OF ITS USE IN MORE THAN 90 PERCENT OF SOME 100 NEGOTIATED BOUNDARY DELIMITATIONS. HE REPEATED INDIA'S TRADITIONAL OPPOSITION TO COMPULSORY DISPUTE SETTLEMENT, NOTING THAT THIS ISSUE DOES NOT ALWAYS FOLLOW THE USUAL GROUP DIVISION.

7. THE MEETING CONCLUDED WITH A BRIEF DISCUSSION OF ARTICLE 15. A FEW MINOR CHANGES OF DETAIL WERE PROPOSED, BUT NO ONE SAW ANY DIFFICULTY WITH THE SUBSTANCE OF THE ARTICLE WHICH WAS REGARDED AS SETTLED. DISCUSSION ON IT WAS THEREFORE TERMINATED.

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8. COMMITTEE III HELD TWO FORMAL SESSIONS. CHAIRMAN YANKOV (BULGARIA) PROPOSED THAT INFORMAL WORKING GROUP UNDER CHAIRMANSHIP OF JOSE LUIS VALLARTA (MEXICO) CONTINUE AS IN PAST SESSIONS TO CONSIDER MARINE POLLUTION ARTICLES. HE STRESSED THAT THIS GROUP SHOULD LIMIT ITS CONSIDERATION AND NOT DISTURB THE DELICATE BALANCE ESTABLISHED IN THE ICNT. HE SUGGESTED THAT FOUR FORMAL SESSIONS BE SET ASIDE TO CONSIDER THE RESULTS OF VALLARTA GROUP. YANKOV STATED THAT HE HIMSELF WOULD CHAIR ANY MEETINGS ON MARINE SCIENTIFIC RESEARCH BUT WOULD HOLD SUCH MEETINGS ONLY IF REQUESTED TO DO SO. HE SET ASIDE TWO FORMAL MEETINGS FOR

THIS PURPOSE.

9. THIRTY-SIX SPEAKERS INTERVENED DURING THE COURSE OF THE DEBATE. ALMOST ALL DELEGATIONS AGREED THAT ANY AMENDMENT TO THE TEXT SHOULD BE LIMITED IN NATURE SO AS NOT TO DISTURB ITS BALANCE. AMBASSADOR RICHARDSON INTERVENED ALONG THE SAME LINES WHILE STRESSING OUR PRINCIPLE CONCERNS
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WITH THE TEXT (TEXT TRANSMITTED - GENEVA 5981). FRANCE SUGGESTED THAT ARTICLE 222 (INTERVENTION FOLLOWING A MARITIME CASUALTY) BE AMENDED TO ALLOW INTERVENTION WITHOUT GRAVE AND IMMINENT DANGER AND THAT ARTICLE 212 (STANDARD SETTING FOR POLLUTION) BE AMENDED TO ALLOW STATES IN A REGION TO POOL COMMON PORT ENTRY REQUIREMENTS. A STATE PARTY TO SUCH AN AGREEMENT COULD ENFORCE IN ITS TERRITORIAL SEA THE PORT ENTRY REQUIREMENTS OF ANOTHER STATE. USSR ARGUED AGAINST REOPENING THE POLLUTION TEXT BUT AGREED TO STUDY ANY PROBLEMS CREATED BY THE AMOCO CADIZ. CANADA SUGGESTED A REOPENING OF SOME OLD HARD-FOUGHT ARTICLES INCLUDING 21(2) TERRITORIAL SEA STANDARD SETTING AND 22(5) (COASTAL STATE RIGHT TO INSPECT VESSELS IN THE ECONOMIC ZONE OR TERRITORIAL SEA). SPAIN SUGGESTED A REOPENING OF ARTICLE 234 (STRAITS). A FEW DEVELOPING STATES (MADAGASCAR, PAKISTAN, AND ZAIRE) REQUESTED A DISCUSSION OF THE ARTICLES ON TRANSFER OF TECHNOLOGY. LIBERIA SUGGESTED THE DELETION OF ARTICLE 253 (IMPLIED CONSENT FOR MARINE SCIENTIFIC RESEARCH PROJECTS). U.S. HELD BILATERAL DISCUSSIONS WITH AUSTRALIA AND NORWAY. ALTHOUGH AUSTRALIA HAS BECOME MORE NAVIGATION ORIENTED IN THE PAST TWO SESSIONS, THEY LISTENED WITH SOME SYMPATHY TO OUR AMENDMENTS. THEY PROMISED TO DISCUSS THEM FULLY WITHIN THEIR DELEGATION. NORWAY SHOWED SOMEWHAT GREATER SYMPATHY TO OUR AMENDMENTS THAN PREVIOUSLY, PROBABLY DUE TO THE FACT THAT WE MET THIS TIME WITH THEIR ENVIRONMENTAL EXPERT (STANG LUND) WHO HAS JUST ARRIVED IN GENEVA.

10. G-5 MET FOR CONTINUED DISCUSSION OF POLLUTION QUESTIONS. DISCUSSION CENTERED PRIMARILY ON ARTICLE 221(6) (COASTAL STATE ENFORCEMENT RIGHTS IN THE ECONOMIC ZONE) AND ARTICLE 229 (FLAG STATE PREEMPTION). UK, USSR AND JAPAN REMAIN MOST RELUCTANT TO DELETE THE MAJOR DAMAGE
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REQUIREMENT IN 221(6) OR TO ADD THE THREAT OF MAJOR DAMAGE IN 229 AS PROPOSED IN U.S. AMENDMENTS.

11. DISPUTE SETTLEMENT REGARDING FISHERIES IN THE EEZ:
ON APRIL 20 THE FIRST MEETING WAS HELD OF NEGOTIATING
GROUP 5 (NG-5), ON SETTLEMENT OF DISPUTES OVER RIGHTS IN
THE ECONOMIC ZONE. THE WORK PROPOSAL OF THE CHAIRMAN,
STAVROPOULOS OF GREECE, WAS APPROVED WITHOUT OPPOSITION.
THE PROGRAM LIMITS THE GROUP'S WORK TO CONSIDERATION OF
PARAGRAPHS 1 AND 4 OF ICNT 296. THE SOVIET UNION,
SUPPORTED BY THE FEDERAL REPUBLIC OF GERMANY, SUGGESTED
THAT THE SECOND CLAUSE OF 297(1)(B) ALSO BE CONSIDERED.
NO CLEAR DECISION WAS TAKEN ON THIS POINT.

12. MEXICO, ON BEHALF OF THE COASTAL STATES, SUBMITTED
A PROPOSAL FOR THE COMPLETE REVISION OF 296. (FULL TEXT
FOLLOWS SEPTTEL.)

13. THE TWO IMPORTANT CHANGES FROM THE PRESENT ICNT
ARE THE DELETION OF ICNT 296(4), AND THE ADDITION OF THE
WORD "ONLY" IN THE CHAPEAU OF WHAT IS NOW 296(2). STATE-
MENTS IN SUPPORT OF THE PROPOSAL WERE MADE BY ARGENTINA,
CHILE AND ECUADOR. ALL EMPHASIZED THAT COASTAL STATE
RIGHTS OVER LIVING RESOURCES WERE SOVEREIGN RIGHTS WHICH
BY THEIR NATURE CANNOT BE SUBJECT TO COMPULSORY THIRD
PARTY SETTLEMENT.

14. THE U.S. (SOHN) SPOKE IN OPPOSITION TO THE MEXICAN
PROPOSAL. THE U.S. NOTED THAT THERE ARE LEGITIMATE AREAS
OF UNCHALLENGEABLE DISCRETION WITH RESPECT TO THE LIVING
RESOURCES OF THE ECONOMIC ZONE, AND THAT COASTAL STATES
ARE ENTITLED TO PROTECTION AGAINST UNWARRANTED
INTRUSION INTO THESE AREAS. ON THE OTHER HAND, THE RIGHTS
OF DISCRETION WILL OCCASIONALLY BE ABUSED. OTHER STATES
ARE ENTITLED TO COMPULSORY RECOURSE AGAINST SUCH ABUSE,
PARTICULARLY SINCE THE RELEVANT SUBSTANTIVE ARTICLES

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OMB-01 PA-01 PM-05 SP-02 SS-15 ICA-11 /190 W

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- 61, 62, 69 AND 70 - IMPOSE OBLIGATIONS AS WELL AS RIGHTS ON THE COASTAL STATES. THE IDEA THAT THIRD PARTY SETTLEMENT IS INCOMPATIBLE WITH THE EXISTENCE OF SOVEREIGN RIGHTS IS NOT SUPPORTABLE. IN THE EXERCISE OF THEIR SOVEREIGNTY STATES CAN CHOOSE TO LIMIT IT BY TREATY SUCH AS THIS ONE NOW BEING NEGOTIATED. THE U.N. CHARTER ALREADY OBLIGATES STATES TO SETTLE ALL DISPUTES PEACEFULLY. THE ONLY QUESTION IS BY WHAT MEANS. MANY ARBITRATIONS HAVE BEEN HELD ON QUESTIONS INVOLVING SOVEREIGN RIGHTS. IN PARTICULAR, SUBPARAGRAPH (C) OF 296(4) IS OVERLY PROTECTIVE OF THE COASTAL STATES. SOVEREIGN RIGHTS MUST BE CALLED IN QUESTION WHEN THEY ARE MISUSED.

15. ALONG THE LINES OF THE U.S. INTERVENTION WERE STATEMENTS BY JAMAICA AND SINGAPORE, BOTH OF WHOM PROPOSED DELETION OF 296(4)(C). SWITZERLAND SUBMITTED ORALLY THE FOLLOWING PROPOSAL FOR THE REVISION OF SUBPARAGRAPHS (A), (B) AND (C) OF 296(4):
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"(A) THE SOVEREIGN RIGHTS OF A COASTAL STATE OR THE EXERCISE OF A DISCRETION BY SUCH A STATE SHALL NOT BE CHALLENGED BY A COURT OR TRIBUNAL EXCEPT WHEN THE DISPUTE IS IN REGARD TO THE EXERCISE OR THE EXISTENCE OF SUCH SOVEREIGN RIGHTS OR DISCRETION;

"(B) NO CHANGE

"(C) DELETE."

RICHARDSON

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW OF THE SEA, SPEECHES
Control Number: n/a
Copy: SINGLE
Draft Date: 25 apr 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978GENEVA06208
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780176-0120
Format: TEL
From: GENEVA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780421/aaaaarfv.tel
Line Count: 323
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: e41249a8-c288-dd11-92da-001cc4696bcc
Office: ACTION DLOS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 6
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 29 mar 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2862817
Secure: OPEN
Status: NATIVE
Subject: LOS CONFERENCE - APRIL 20 HIGHLIGHTS SUMMARY: HIGHLIGHT OF DAY WAS SPEECH BY AMB. RICHARDSON ON THE NEED TO MODIFY THE ICNT PROVISIONS REGARDIN
TAGS: PLOS, SOPN, (RICHARDSON, ELLIOT L)
To: STATE LOS ANGELES
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/e41249a8-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014